

DIRECT TESTIMONY

OF

DAVID SACKETT

Policy Group

Policy Division

Illinois Commerce Commission

**Application pursuant to Section 7-204 of the Public Utilities Act for authority to engage in a Reorganization, to enter into an agreement with affiliated interests pursuant to Section 7-101, and for such other approvals as may be required under the Public Utilities Act to effectuate the Reorganization**

Wisconsin Energy Corporation, Integrys Energy Group, Inc., Peoples Energy, LLC,  
ATC Management Inc., American Transmission Company LLC,  
The Peoples Gas Light and Coke Company, and North Shore Gas Company

Docket No. 14-0496

November 20, 2014

I. WITNESS QUALIFICATIONS ..... 1

II. PURPOSE OF TESTIMONY AND BACKGROUND INFORMATION..... 3

III. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS ..... 4

IV. SECTION 7-204(B)(6) ..... 4

V. CONCLUSION ..... 8

1   **I.    Witness Qualifications**

2   **Q.    Please state your name and business address.**

3   A.    My name is David Sackett. I am employed by the Illinois Commerce  
4       Commission, 527 East Capitol Avenue, Springfield, Illinois, 62701.

5  
6   **Q.    What is your current job title?**

7   A.    I am employed as an Economic Analyst in the Policy Program of the  
8       Policy Division of the Illinois Commerce Commission ("Commission" or  
9       "ICC").

10

11   **Q.    What are your responsibilities within the Policy Division – Policy**  
12       **Program?**

13   A.    I provide economic analysis and advise the Commission and other Staff  
14       members on issues involving the utility industries. I review tariff filings and  
15       make recommendations to the Commission concerning those filings. I  
16       provide testimony in Commission proceedings. I am one of the primary  
17       Staff experts on affiliate issues.

18

19   **Q.    State your educational background.**

20   A.    I graduated from Kankakee Community College with an Associate of  
21       Science degree in Arts and Sciences in 1998. I graduated with highest  
22       honors from Illinois State University with a Bachelor of Science degree in  
23       Economics and History in 2000. I obtained a Master of Science degree in

Applied Economics from Illinois State University in the Electric, Natural Gas and Telecommunications Economics sequence in 2002.<sup>1</sup> I also completed an internship at the Commission in the Energy Division in 2001.

**Q. Describe your professional experience.**

A. Since July 2007, I have been an Economic Analyst in the Policy Program of the Commission's Energy and Policy Divisions. During that time I have participated in numerous docketed proceedings before the Commission. Of particular note has been my testimony dealing with affiliate issues. Most recently, I filed testimony in Nicor Gas Company's Operating Agreement docket (Docket No. 09-0301 consolidated with Docket No. 11-0046, in which Nicor Gas Company sought approval of its reorganization), Docket Nos. 11-0280/11-0281 (Cons.) (North Shore Gas Company and The Peoples Gas Light and Coke Company rate proceedings), Docket Nos. 11-0561/0562/0563/0564/0565/0566 (Cons.) (a rate increase proceeding for certain Utilities Inc. water companies), Docket No. 11-0767 (an Illinois-American Water Company rate increase proceeding), Docket No. 12-0299 (North Shore Gas Company and The Peoples Gas Light and Coke Company proposal to enter into an affiliated interest agreement with its affiliate ITF), Docket Nos. 12-0511/12-0512 (Cons.) (North Shore Gas Company and The Peoples Gas Light and Coke Company rate

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<sup>1</sup> "The Electricity, Natural Gas, and Telecommunications Sequence is a structured program that combines training in basic economic theory and statistical methods with specialized training in the theory, history and institutions of the economics of regulation." <http://www.econ.ilstu.edu/grad/program.htm>.

proceedings), Docket Nos. 12-0273/13-0612 (cons.) (Commission Investigation into affiliated interactions by North Shore Gas Company and The Peoples Gas Light and Coke Company) and Docket No. 04-0419 (Aqua Illinois rate increase proceeding).

Prior to joining the Commission, I was an instructor at Illinois State University from 2003 to 2006, where I taught various courses in economics and statistics to undergraduate students. I retired as a Major from the Marine Corps Reserve in July of 2014 after more than 21 years of service in the Infantry; I have completed two combat deployments to Iraq.

**II. Purpose of Testimony and Background Information**

**Q. What is the subject matter of your direct testimony?**

A. The purpose of my testimony is to present my analysis and recommendations on issues presented by the application for authority to engage in a reorganization (“Reorganization”) filed by Wisconsin Energy Corporation (“Wisconsin Energy”), Integrys Energy Group, Inc. (“Integrys”), Peoples Energy, LLC (“PELLC”), ATC Management Inc. (“ATCM”), American Transmission Company LLC (“ATCLLC”) (collectively, ATCM and ATCLLC referred to as “ATC”), The Peoples Gas Light and Coke Company (“Peoples Gas”) and North Shore Gas Company (“North Shore”) (individually, the “Company” and collectively, Peoples Gas and North Shore referred to as the “Companies” or the “Gas Companies”) (all, collectively, the “Joint Applicants”

or “JA”). Specifically, my testimony addresses whether this reorganization complies with Section 7-204(b)(6) of the Public Utilities Act (“Act”).

**III. Summary of Conclusions and Recommendations**

**Q. Please summarize your conclusions and recommendations.**

A. I conclude that that the proposed Reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction and recommend that the Commission find as such as required by Section 7-204(b)(6) of the Act.

**IV. Section 7-204(b)(6)**

**Q. What decision must the Commission make in this case regarding the effect of the proposed reorganization on competition in those markets over which the Commission has jurisdiction?**

A. This section of the Act states that the Commission must find that “the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction.”  
220 ILCS 5/7-204(b)(6).

**Q: How do the Joint Applicants address Section 7-204(b)(6) in their testimony?**

A: The Joint Applicants’ witness James Schott only discusses the impact of the Reorganization on the Peoples Gas and North Shore natural gas

markets that are competitive. He also discusses the divestiture

("Divestiture") of Integrys Energy Services ("IES") to this Reorganization.

Based on the plans for the Reorganization and commitments of Wisconsin Energy discussed in the testimony of Mr. [Allen L.] Leverett and Mr. [Scott] Lauber, the Reorganization is not likely to have a significant adverse effect on competition in the markets over which the Commission has jurisdiction. There will be no changes to the Gas Companies' tariffs or procedures governing their natural gas transportation or retail choice programs as a result of the Reorganization. Moreover, at the time the Reorganization closes, it is expected that IES will have been divested and not be part of the new, post-closing company. The divestiture of IES will have no adverse impact on competition. (Joint Applicants Ex. 4.0, 9)

**Q. Do you agree that these are the relevant markets for Section 7-204(b)(6)?**

**A.** No. I think that the markets over which the Commission has jurisdiction that might be influenced by the Reorganization are all competitive retail utility markets within the state, including gas and electric. If there were an effect of this Reorganization on any retail electric markets in Illinois or the retail gas markets in other utility service territories, the Commission would need to consider these effects.

**Q: How do you interpret the phrase "significant adverse impact on competition"?**

**A:** A merger that would have a significant impact on competition would likely increase the ability of a firm or firms in the market to, all else equal, increase prices above costs.

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120 **Q. Is market power easy to measure?**

121 **A.** No. It requires a lot of data to estimate market power and the effect a  
122 merger has on it. A shortcut is to investigate market shares. The idea is  
123 that a market with few big sellers, called a concentrated market, implies that  
124 the sellers have greater control over price than a market with many, small  
125 firms.

126 **Q. What is the Horizontal Merger Guidelines<sup>2</sup>?**

127 **A.** The Department of Justice ("DOJ") formulated the Horizontal Merger  
128 Guidelines ("Guidelines") as a rule of thumb to indicate when a merger might  
129 grant the resulting firm a significant increase in market power. The  
130 Guidelines are a way for the DOJ to screen mergers for those unlikely to  
131 increase market power and thus, do not require further investigation and  
132 those that may indicate a problem and need further investigation. The  
133 Guidelines use the change in a market concentration index called the  
134 Herfindahl-Hirschman Index ("HHI") to examine a reorganization or merger's  
135 effects. The index is equal to the sum of the square of the market share of  
136 each firm in percentage points.<sup>3</sup>

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<sup>2</sup> The Horizontal Merger Guidelines were most recently updated in 2010. They can be found at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>. Here I refer to Section 5.3.

<sup>3</sup> Markets are classified by degree of concentration and increase in concentration resulting from a merger. If there is little increase in concentration, the Guidelines state that the merger is, "unlikely to have adverse competitive effects and ordinarily require[s] no further analysis." (Guidelines, Section 5.3) If a market is more concentrated and there is a big enough increase in concentration, the issue merits further investigation. Finally, the Guidelines deem concentrated markets with a big increase in concentration from the merger to be market power enhancing. The Guidelines also offer merging entities the chance to show that the increased market concentration does not lead to increases in market power.



**Q. Will the proposed reorganization harm competition in the transportation market?**

A. No. The Joint Applicants have indicated that the Divestiture of IES would happen regardless of whether the Reorganization with WEC happens. “Integrus Energy Group still plans to sell Integrus Energy Services to a subsidiary of Exelon Corporation if the merger is not approved. (Joint Applicants Response to Staff DR DAS-1.06) Thus, there is no impact on any of the markets over which the Commission has jurisdiction, to include no change to any related HHIs.

**Q. Do you agree with Mr. Schott that the divestiture of IES will have no adverse impact on competition?**

A. No. The Divestiture of IES, which was announced as complete on November 3, 2014,<sup>4</sup> logically has increased market concentration in each of the markets where both IES and Constellation New Energy had previously competed for customers.<sup>5</sup> However, as noted above, this Divestiture is independent of this Reorganization and should not affect the approval of this Reorganization.

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<sup>4</sup> <http://www.integrusenergy.com/Pdf/2014-11-03-pressrelease.pdf>

<sup>5</sup> These markets include Peoples Gas and North Shore (large volume gas transportation only), Nicor Gas, ComEd and Ameren (both gas and electric).

157   **V.    Conclusion**

158   **Q.    What is your conclusion in this case?**

159   A.    I conclude that that the proposed Reorganization is not likely to have a  
160       significant adverse effect on competition in those markets over which the  
161       Commission has jurisdiction.

162

163   **Q.    What are your recommendations for the Commission in this case?**

164   A.    I recommend that the Commission find that the proposed Reorganization  
165       is not likely to have a significant adverse effect on competition in those  
166       markets over which the Commission has jurisdiction as required by  
167       Section 7-204(b)(6 of the Act.).

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169   **Q.    Does this conclude your prepared direct testimony?**

170   A.    Yes.